REMARKS

This Amendment, filed in reply to the Office Action dated January 13, 2006, is believed to be fully responsive to each point of rejection raised therein. Accordingly, favorable reconsideration on the merits is respectfully requested.

Claims 1-45 remain pending the application. Claims 3 and 42 have been amended. Applicant requests that these amendments be entered because they merely correct informalities and therefore do not raise new issues in need of further consideration. In addition, they place the application in better condition for appeal by eliminating § 112 issues.

Withdrawal of Claim 45

The Examiner has withdrawn claim 45 from further consideration on the merits because the Examiner contends that the claim reads on non-elected subject matter. Applicant respectfully disagrees and requests that the Examiner reconsider the withdrawal. The withdrawal is improper because claim 45 depends on elected claim 1. The fact that claim 45 further describes features of claim 1 would indicate that the claim falls within the elected subject matter. Also, it appears that the Examiner may have misinterpreted claim 45. In claim 45, the first characteristic corresponds to statistical tendencies of the extracted person. Therefore, claim 45 should be properly considered with the remaining elected claims.

35 U.S.C. § 112 Rejections

Claims 3 and 42 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. As mentioned above, claims 3 and 42 have been amended to make them more definite. Therefore, Applicant requests that the rejections be withdrawn.

Prior Art Rejections

The claims have been rejected as follows:

- Claims 1-15, 32-36, 38, 41, and 44 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Eckhoff (Eckhoff, Jean, "News Briefs", 1/10/2000, "Convenience Store New," v36, n1, p14) in view of Fridman (Fridman, Sherman, "Bans Eye Iris Scan Identification Technology," 12/9/1999, Newsbytes) and Montero (U.S.P. 6,133,912);
- Claims 31 and 37 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Eckhoff in view of Fridman, Montero and further in view of Kanevsky et al. (U.S.P. 6,421,453);
- Claims 20-23 and 42-43 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Eckhoff in view of Fridman; and
- Claims 39 and 40 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Eckhoff in view of Fridman and further in view of Marsh et al. (U.S.P. 6,876,974). We propose the following course for responding to the Office Action.

With regard to the rejection of independent claim 1 under 35 U.S.C. § 103 over the basic combination of Eckhoff, Fridman and new art Montero, Applicant traverses the rejection for at least the following reasons.

A feature of the present invention as described by claim 1 includes determining a customer classification, where the customer classification include multiple individuals. The classification is based on a first characteristic of an extracted person. A display is switched

based on the customer classification. Eckhoff and Fridman are previously of record. Eckhoff relates to a bio-metric face recoginition system for authenticating customers and to prevent fraud. Fridman relates to display of ads for customers. The nature of the display selection is not specified.

The Examiner's rejection concedes that the combination of Eckhoff and Fridman does not teach customer classification based on extracted information, where the customer classification includes multiple individuals. The Examiner relies upon the newly cited Montero reference to teach the classification of multiple individuals. However, the Examiner's rejection remains improper for at least the following five reasons.

First, in making the combination, the Examiner contends that "targeting ads to the identified user as suggested inherently includes taking a photograph, extracting a face, analyzing a first characteristic ... and present targeted ads that match parameters of the user...." This inherency position is not supportable. Contrary to the Examiner's contention, identification of a user does not require the taking of any photograph. For instance, the information that identifies an individual can simply be taken from a collection of data for an individual (birth date, social security number, name, address, etc.). None of this information requires the taking of a photograph.

Second and relatedly, Montero describes ads delivered over a network. It is apparent that identification of users in this scenario does not require any type of photographing of the user. The profile information for a user is entered by a subscriber. col. 4, lines 51-55. This

undermines the Examiner's assertion that identifying or classifying information inherently requires the taking of a photograph.

Third, because Montero relates to a computer network service and Eckhoff and Fridman relate to ATMs, one skilled in the art would not apply the teachings of Montero with Eckhoff and Fridman. The Montero reference does not relate to problems of either the basic combination of Eckhoff or Fridman and also does not present solutions to the problem sought to be addressed by the present invention. Therefore, Montero comprises non-analogous art.

Fourth, assuming *arguendo* that the combination is proper, the combination of Eckhoff, Fridman and Montero does not teach or suggest each feature of claim 1. Claim 1 describes extracting a feature and providing a customer classification based on such extraction, where the classification includes multiple users. The Examiner cites to the biometric analysis of Eckhoff as the extraction. Because Eckhoff provides the biometric analysis for authentication and security purposes, one skilled in the art would not modify Eckhoff so that the classification includes multiple individuals. Such a modification would undercut the principle of operation of the Eckhoff reference, allowing multiple individuals to access a single account. The Examiner contends that it would be obvious to include the multiple user classification for purposes of targeting ad information (citing Montero). However, the targeted ad need not be based, and should not be based, on the same criteria for identifying an individual user as in Eckhoff.

The Examiner argues that Eckhoff discloses performing a facial recognition of a user and presenting customized ads to the user, and Fridman, in making up for the deficiencies of

Eckhoff, discloses biometrically identifying user characteristics and presenting customized ads based on the result of the identification of characteristics and further, Montero, in making up for the deficiencies of Fridman, discloses classifying a desired target population segment such as males under 40 years of age based on an identified user profile and delivering appropriate particular ads for such a classification. Namely, that the combination of Eckhoff, Fridman and Montero identifies a user by analyzing a first characteristic based on the facial recognition of a person in an image, determines a customer classification based on the identified user profile, and switches the image based on the classification.

As described above, the combination of Eckhoff, Fridman and Montero identifies a user by analyzing the first characteristic based on the facial recognition and determines the customer classification based on the identified user profile and thus the Examiner alleges that it is obvious to determine a customer classification of a person in a photographed image based on the first characteristic of the person as claimed in Claim 1 of the present application.

However, according to the above reasoning, it is necessary to identify a person and look-up the profile of the identified user in order to determine the customer classification. In this respect, Claim 1 does not require the steps of identifying a person and looking-up the user profile, in contrast to the content of the combination of Eckhoff, Fridman and Montero. In particular, claim 1 requires "detecting a first characteristic" while the combination of Eckhoff, Fridman and Montero analyzes a first characteristic in order to identify a user (page 4, line 5 of the Office Action), and those two are distinct in their language (detecting and analyzing) in this respect. In particular, while Claim 1 recites to determine the customer classification based on the

detected first characteristic, the combination of references, in order to determine the customer classification, does not detect the first characteristic of a person but requires identifying a person based on the result of analyzing the first characteristic of the person and referring to the profile information of the identified person. If Claim 1 included the content of the combination of references, it would become necessary to identify a person and to refer to the profile information of the identified person as essential requirements for realizing the contents. The content of claim 1 and the content disclosed by the combination of references, therefore, are totally distinct in this respect.

Fifth, the combination of Eckhoff and Montero would classify a customer profile based on the database information entered by a user. This is data separate and apart from the data of a biometric analysis of Eckhoff. Stated differently, the extracted data (of a photograph) described by claim 1 allows for classification, where the classification involves multiple individuals. The claim describes dual characteristics for the extracted data. The combination of Eckhoff and Montero would lead to the biological information for a single person (for authentication) and would lead to a separate form of user input information to determine the demographics of that individual that would be suitable for a particular series of ads (Montero). No data in the combination meets the dual characteristics of the extracted data in claim 1.

Therefore, claim 1 is patentable for at least the foregoing reasons.

The rejection of claim 20 over the combination of Eckhoff and Fridman is also traversed based on at least the first reason stated above for claim 1. Moreover, the Examiner contends that

the display of an image will be premised based on the user information; however, alternative bases (other than the feature extraction) can control the image display in the cited art. Therefore, claim 20 is also patentable.

The remaining claims are patentable based on their dependency. The references of Marsh and Kanevsky do not make up for deficiencies in the primary combination.

In addition, regarding claim 2, it states that the first characteristic is at least one of height, a size of a face, a shape of hairs, a shape of clothes, density distribution of clothes, color distribution of clothes, presence or absence of makeup, and presence or absence of accessories. The identification of a person is impossible by analyzing any of those first characteristics. In the case of Eckhoff's facial recognition, the identification of a person can be carried out by recognizing, for example, a distance between eyes, a position of nose, a position of mouth and the like within a face area. However, it is impossible to identify a person by the characteristics defined in Claim 2, such as height, a size of a face, a shape of hairs, a shape of clothes, density distribution of clothes, color distribution of clothes, presence or absence of makeup, and presence or absence of accessories, since there are a number of people having common characteristics regarding those characteristics. In this respect, Claim 2 is different from the content of the combination of Eckhoff, Fridman and Montero.

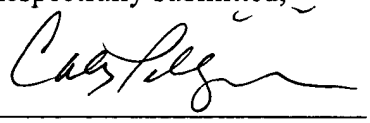
Regarding claim 44, which depends from Claim 20, it defines determining a customer classification of the extracted person based on a detected first characteristic corresponding to the extracted person and thereby deciding based on the customer classification whether the display

of the image is prohibited. Therefore, claim 44 should also be allowable for reasons similar to the fourth reasons described above in connection with claim 1.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



Carl J. Pellegrini
Registration No. 40,766

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

WASHINGTON OFFICE
23373
CUSTOMER NUMBER

Date: April 12, 2006